

SUGGESTIONS FOR CHANGES TO MONTANA SUBDIVISION AND PLATTING ACT - SUBMITTED DECEMBER 2003

	HB 370, 2003	MAR	Myra Shults (See also Jan. 7 letter)	Ravalli Co.	Flathead Co.	Smart Growth	G. Stewart Nash
In General			Create new part that addresses expedited review.	1. Consolidate expedited review provisions. 2. Clarify how remainders are reviewed and the procedure for transfer. 3. Encourage through incentives concurrent DEQ/planning review.	Require DEQ review to be completed before local review process begins.	1. Favors the final version of HB 370 that consolidates minor subdivision provisions into 76-3-609 and separates minor and major subdivisions in the law. 2. Require DEQ review be completed before hearing on preliminary plat. 3. Require that transportation permits be made available prior to preliminary plat hearing. 4. Strengthen incentives for local governments to implement plans through zoning and allow expedited review of subdivisions if zoning based on a growth policy is in place.	1. Clarify whether surveyor is required to certify work--some counties require it; some don't. 2. Clarify that remainder does not need to be surveyed.
76-3-101							
76-3-102							
76-3-103. Definitions.	1. Define "minor subdivision". 2. Define "original tract of record".	1. Define "minor subdivision". 2. Define "original tract of record".		1. Create definition of "subsequent minor subdivision": "A minor subdivision of a lot within a minor subdivision or the minor subdivision of a remainder of a minor subdivision that was reviewed under the MSPA." 2. Define "minor subdivision". 3. Define "major subdivision".	1. Change definition of "subdivision" to be a division of land that creates one or more parcels containing less than 20 acres (from 160 acres) to be consistent with state's review threshold for sanitation. 2. Define "minor subdivision". 3. Define "major subdivision" as a	See HB 370.	

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				4. Define "remainder" in MSPA and MSSA.	subdivision that creates 6 or more lots from the parent tract that does not qualify for expedited review. It would be subject to the review and timelines provided in 76-3-601 through 76-3-605.		
76-3-104							
76-3-105							
76-3-201. Exemption for certain divisions of land -- fees for examination of division.					In general: Part 2 should be consolidated into no more than 4 sections.		
76-3-202							
76-3-203							
76-3-204							
76-3-205							
76-3-206							
76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions -- fees for examination of division.		With an exception, provide that a division of land in an area where zoning requirements are in place is not considered a subdivision but is subject to survey.	Change catchline from "Subdivisions exempted..." to "Divisions of land exempted..." (technical change).				
76-3-208. Subdivisions exempted from			1. "Move" this section as it is to a new part in Title 76 chapter 3 to be entitled				

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surveying and filing requirements but subject to review provisions.			"Expedited Review" (Note: this would appear in a bill as a repeal of 76-3-208 and then a "New Section" with the same provisions with a codifying instruction to codify the new section in Title 76, chapter 3).				
76-3-209							
76-3-210. Subdivisions exempted from requirement of an environmental assessment.			1. "Move" this section as it is to a new part in Title 76 chapter 3 to be entitled "Expedited Review" (Note: this would appear in a bill as a repeal of 76-3-210 and then a "New Section" with the same provisions with a codifying instruction to codify the new section in Title 76, chapter 3). 2. Clarify how the planning board certifies a written statement giving the reasons for exempting a proposed subdivision from the requirement to complete any portion of the EA.				
76-3-301							
76-3-302							
76-3-303							
76-3-304							
76-3-305							

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76-3-306							
76-3-307							
76-3-401							
76-3-402							
76-3-403							
76-3-404							
76-3-405							
76-3-406							
76-3-501							
76-3-502							
76-3-503							
76-3-504. Subdivision regulations -- contents.	Technical amendment - removes reference to subsection (3) of 76-3-609.	1. Local subdivision regulations to identify other entities involved in the review process, identify each entity's role in the process, establish a time frame in which the entity must complete its part of the process, and require that recommendations made by the entity be in writing and signed. 2. The subdivider can request a meeting with those entities that must occur within 5 days of the request. 3. A subdivider's communication with elected officials is not subject to ex parte	The A.G. Opinion submitted by Ms. Shults (49 Op. Att'y Gen. No. 7) points out that there is a conflict between 76-3-511 and 76-3-504(1)(f)(iii). According to Opinion, removal of phrase "at a minimum" may clarify.			See HB 370.	

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		communication prohibition. 4. Local regulations must establish a pre-application process with set timelines.					
76-3-505. Provision for summary review of minor subdivisions.	Repeal.	Repeal.	1. In subsection (1), clarify that DEQ have a procedure for review of proposed subdivisions consisting of 5 or fewer parcels before they are approved by the governing body - otherwise summary review is difficult to impossible. 2. Require submission of basic information about water and septic -but not for a full sanitary review. 3. Clarify what information has to be provided for the first minor subdivision from a tract of record and what sort of review is required. 4. Very few counties have county-wide zoning and probably will not adopt zoning for fear of litigation; encourage county zoning and allow for ease of summary review under this section by providing that zoning by a county is a legislative act and immune from suit pursuant to section 2-9-111. 5. "Move" this section with changes to a new part in Title 76 chapter 3 to be	Consider repeal.		See HB 370.	

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			entitled "Expedited Review" (Note: this would appear in a bill as a repeal of 76-3-505 and then a "New Section" with the same provisions with a codifying instruction to codify the new section in Title 76, chapter 3). 6. Clarify what sort of review applies to a subsequent minor subdivision from a tract of record when neither this section nor 76-3-609 apply.				
76-3-506							
76-3-507							
76-3-508							
76-3-509. Local option cluster development regulations and exemptions authorized.			Possibly "move" this section as it is to a new part in Title 76 chapter 3 to be entitled "Expedited Review" (Note: this would appear in a bill as a repeal of 76-3-509 and then a "New Section" with the same provisions with a codifying instruction to codify the new section in Title 76, chapter 3).				
76-3-510							
76-3-511							

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76-3-601. Submission of preliminary plat for review.	Remove reference to a plat that is eligible for summary review under 76-3-505 (repealed).					See HB 370.	
76-3-602. Fees.						Allow governing body to establish fees to defray costs of staff needed for 76-3-604 completeness review.	
76-3-603. Contents of environmental assessment.	Technical amendment - remove reference to subsection (3) of 76-3-609.					See HB 370.	
76-3-604. Review of preliminary plat.		1. Require a completeness check of the preliminary plat by the reviewing agency within 5 working days and provides guidance as to what a complete plat is. 2. Provide a procedure and timelines for resubmittal of a plat that was determined to be incomplete at the first submittal; reviewing agency may not identify any completeness deficiencies that were not originally identified. 3. Subdivider may review and comment within 5 working days on a reviewing agency's recommendation before the recommendation becomes final. 4. Specify that the governing body shall make its determination on				Establish a review timeline to determine completeness of subdivision application as long as it does not restrict reviewing authority's ability to request more information during review process.	

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		the preliminary plat within 60 working days of submittal of the complete preliminary plat. 5. Clarify that a disapproval must be accompanied by a letter stating the specific reasons for disapproval.					
76-3-605. Hearing on preliminary plat.	Change the section referred to in exception to provision requiring a hearing on a preliminary plat from 76-3-505 (repealed) to 76-3-609.	1. Change the section referred to in exception to provision requiring a hearing on a preliminary plat from 76-3-505 (repealed) to 76-3-609. 2. Provide that "relevant evidence" for the purposes of what must be considered in a hearing on a preliminary plat means oral or written testimony that the governing body or agency finds credible.	Possibly require the governing body to attend the planning board meeting to listen to testimony but not participate and require all parties to submit all the information at the planning board hearing.			See HB 370.	
76-3-606							
76-3-607							
76-3-608. Criteria for local government review.	1. Technical change to remove reference to 76-3-505 (repealed). 2. Strike provision exempting a minor subdivision from review criteria if that subdivision is proposed in an area where a growth policy has been adopted; strikes provision that growth policy must conform to 76-1-601 in order for	1. Technical change to remove reference to 76-3-505 (repealed). 2. Specify that a subdivision proposal must undergo review for compliance with all applicable zoning regulations in effect at the time the application is considered complete. 3. Strike provision exempting a minor	Move subsection (6) to 76-3-609, as is done in HB 370, but retain reference to zoning.			See HB 370.	

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	growth policy to serve as basis for the exemption from review criteria (essentially moved to 76-3-609 with zoning reference omitted).	subdivision from review criteria if that subdivision is proposed in an area where a growth policy has been adopted; strikes provision that growth policy must conform to 76-1-601 in order for growth policy to serve as basis for the exemption from review criteria (essentially moved to 76-3-609, with zoning reference omitted). 4. Provide that a governing body may only deny approval of a subdivision if there is substantial and credible evidence that the subdivision does not comply with criteria listed elsewhere in this section or will significantly adversely affect agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, or public health and safety.					
76-3-609. Review procedure for minor subdivisions.	1. Clarify that minor subdivisions (defined in 76-3-103) must be reviewed as provided in this section. 2. Provide procedure for review of the first minor subdivision from the original tract of record	1. Clarify that minor subdivisions (defined in 76-3-103) must be reviewed as provided in this section. 2. Provide procedure for review of the first minor subdivision from the original tract of record	Comments: 1. Some local subdivision regulations allow a final plat to be submitted rather than a preliminary plat and conditions are imposed on the final plat, necessitating submittal of another "final" plat.	Clarify review requirements for a "subsequent minor subdivision" as defined in 76-3-103.	1. Make minor subdivisions subject to findings of fact that weight review criteria as provided in 76-3-608(2) and (3). 2. Subsequent minors to be reviewed within 35 working days, an EA and	1. To deal with remainders, allow governing body to adopt regulations that establish review requirements for subsequent minor subdivisions that meet or exceed those for the first minor subdivision. 2. See additional provisions	

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	<p>(defined in 76-3-103).</p> <p>3. Remove provision that the governing body provide in writing the conditions to be met if subdivision is conditionally approved or, if the subdivision is denied, what local regulations would not be met if the subdivision existed.</p> <p>4. List requirements that do not apply to a first minor subdivision created from an original tract of record, including: preparation of an EA, the requirement to hold a hearing, and the requirement to review the subdivision for certain criteria if the subdivision is proposed in an area where a growth policy has been adopted.</p> <p>5. Specify review criteria for a first minor subdivision.</p> <p>6. Allow governing body to adopt regulations that establish review requirements for subsequent minor subdivisions that meet or exceed those for the first minor subdivision.</p> <p>7. Establish the conditions under which a preliminary plat is not required to be submitted for a minor</p>	<p>(defined in 76-3-103).</p> <p>3. Requires governing body to make a decision on a proposed first minor subdivision within 35 working days of the submission of a complete preliminary plat (not an application), with a completeness determined in accordance with 76-3-604.</p> <p>4. Remove provision that the governing body provide in writing the conditions to be met if subdivision is conditionally approved or, if the subdivision is denied, what local regulations would not be met if the subdivision existed.</p> <p>5. List requirements that do not apply to a first minor subdivision created from an original tract of record, including: preparation of an EA, the requirement to hold a hearing, and the requirement to review the subdivision for certain criteria if the subdivision is proposed in an area where a growth policy has been adopted.</p> <p>6. Specify review criteria for a first minor subdivision.</p> <p>7. Allow governing body</p>	<p>2. HB 370 changes [subsection (4)(b)] do not make clear what review might be required.</p> <p>3. Under HB 370, the provisions of 76-3-608 would not apply to minor subdivisions that meet the criteria in (4)(b).</p> <p>4. Use of the phrase "proper access" in (4)(b)(i) is too subjective; "legal and physical" access is preferred.</p> <p>5. 76-3-609, as amended in HB 370, would erode protection for minor subdivisions and may result in "proliferation of essentially unreviewed minor subdivisions..."</p> <p>6. Current law and changes to the section in HB 370 are not clear with regard to what must be submitted for a first minor subdivision, leaving it open to interpretation.</p> <p>7. Changes to the section in HB 370 that essentially move the provisions of 76-3-608(6)(a) to this section drop the requirement that the proposal is still subject to applicable zoning even if it needn't be reviewed for the criteria listed in 76-3-608(3)(a).</p> <p>8."Move" this section with the changes to a new part in Title 76 chapter 3 to be</p>		<p>parkland required, exempt from public hearing, certified notice given to adjacent property owners who have 15 days to comment.</p>	<p>of HB 370.</p>	

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	subdivision.	to adopt regulations that establish review requirements for subsequent minor subdivisions that meet or exceed those for the first minor subdivision. 8. Establish the conditions under which a preliminary plat is not required to be submitted for a minor subdivision.	entitled "Expedited Review" (Note: this would appear in a bill as a repeal of 76-3-609 and then a "New Section" incorporating the changes with a codifying instruction to codify the new section in Title 76, chapter 3). 9. Clarify what sort of review applies to a subsequent minor subdivision from a tract of record when neither this section nor 76-3-505 apply.				
76-3-610							
76-3-611							
76-3-612							
76-3-613							
76-3-614							

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76-3-620. Review requirements -- written statement.	Remove reference to 76-3-609.	1. Clarify language providing that a governing body may not conditionally approve or disapprove a preliminary plat or subdivision without a written statement detailing the circumstances of the conditional approval or denial. 2. Require the written statement to include reason for imposition of the condition or disapproval under 76-3-608(7), evidence justifying the governing body's action, including a finding about the credibility of the evidence and in what form the evidence was presented, and information about the appeal process.				See HB 370.	
76-3-621							
76-3-625							